

Categorization of Waqf Lands and their Management Using Islamic Investment Models: the Case of the State of Selangor, Malaysia

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Abstract

The existing Waqf lands in the State of Selangor have not been strategically categorized and the modes of Islamic investments have been used arbitrarily to manage these lands. Improper categorization of these lands has also implications for attracting investments and for the human resource needed for managing these waqf resources. This paper proposes the categorization of waqf lands in Selangor based on their strategic locations and uses as stipulated in the provisions of the National Land Codes. Then the categorization is matched with the appropriate Islamic investment modes for their efficient management. The study has provided the benefits and implications of the proposed categorization and, concludes with suggestions for future research

Key words: Categorization, Waqf Lands, Management, Islamic Investment Modes, State of Selangor.

1.0 Introduction

Waqf is an act of holding certain property and preserving it for the confined benefit of certain philanthropy, and prohibiting any use or disposition of it outside that specific objective (Kahf, 2002). It has played a significant role through out Islamic history towards enhancing the social and economic status of the Muslim societies. At the centre of this significant role is land. In fact, land was the first waqf in Islam. It was used to build the first mosque in Islamic history, the mosque of Quba' in Madinah, located 400 kilometers north of Makkah, which still exists today, although rehabilitated and enlarged several times (Khalifah Institute).

Besides religious purposes, waqf land has also been used for infrastructure development, education sector, healthcare and public amenities, among others. For example among the prominent education institutions that were founded and maintained using waqf lands are the Al-Azhar University in Egypt, University of Cordova in Spain and Universitas Islam Indonesia in Jogjakarta, Indonesia (Ahmad Zaki et al., 2008). While in the healthcare sector, one of the famous hospitals built on waqf land is Al Noori Hospital in Damascus, which has been in operation for seven centuries and, in fact, some parts of the hospital are still in use today (Islamic Relief UK). Furthermore, many mosques in Islamic countries are built and operated using waqf lands (M. Sadeq, 2002). The central roles of the waqf lands were also prominent during the last Muslim Caliphate in Turkey. Waqf lands were used extensively, among others, for infrastructure development, agriculture, education and public amenities (Hoexter, 1998).

The colonization of Muslim nations after the Second World War has greatly undermined the importance of the waqf system to Muslim societies (Heyneman, 2004). The colonial masters and their puppet governments usurped waqf lands from Muslim societies and disrupted their smooth management. This ultimately has led to gross mismanagement of various waqf resources in Muslim countries (Raissouni, 2001), until today. As a result, much of Muslim lands, which were previously used for productive income generating activities have been converted for religious and social activities such as mosques, graveyards, orphanages and religious schools. The converted uses of waqf lands for these activities have also affected the attitudes of both the donors and managers of waqf properties towards waqf land. That is, waqf lands should be reserved only for religious and social activities.

This state of affairs regarding waqf lands is also visible in the State of Selangor, the case study of this paper. In Selangor, much of the waqf lands are being used for mosques, cemeteries, schools and orphanages, while about 10% of the identified waqf lands, according to Majlis Agama Islam Selangor (MAIS), up until December 2008, have remained idle and undeveloped¹. Furthermore, the waqf management in Selangor suffers from insufficient skilled manpower and insufficient capital (Anuarul Perai, 2005) as it continues to rely on the federal and state governments funding to develop and manage its waqf landed properties. This state of affairs raises several pertinent questions. Can there be a model that can categorize these waqf lands according to their strategic locations and use? Can these lands, after their categorization be matched to appropriate Islamic investment modes to allow their efficient management? Can such categorization be used as a basis for attracting investment funds and determining the human resource need for the waqf management? Unfortunately, the literature has remained silent on these fundamental issues. This paper develops a model that categorizes waqf lands in Selangor based on their strategic locations and use. The categorization is matched to Islamic investment modes and is also used as a basis for determining the human resource need for the waqf management.

The subsequent section of the paper, section two, reviews related works on waqf lands in the state of Selangor. The section identifies the weaknesses in the present categorization of these waqf lands and the shortcomings in the arbitrary use of the existing Islamic investment modes on these lands. It also spells out the need for an alternative. Section three proposes the categorization of waqf lands in Selangor and their matching with Islamic investment modes. The section also provides the benefits and the implications of the categorization and its corresponding Islamic investment modes. The fourth section concludes the paper with recommendations and suggestions for future research.

2.0 Literature Review

Recently, there is an increasing interest in reviving the waqf institutions. Several international conferences on waqf have been held in recent years (e.g. Harvard – 2006,

¹ Interview with Ustaz Mohd Azmi bin Misron of Bahagian Mal (Unit Wakaf), Selangor Islamic Religious Council on the 2nd of July, 2009

2008; South Africa – 2007; Singapore – 2008; Kuwait – 2008; Iran – 2008). This is besides the numerous local seminars and workshops on waqf. Some of the researches in these conferences and seminars in addition to other works have discussed how waqf institutions have been revived in many parts of the Muslim world at the international, national and organizational levels. For example, the Islamic Development Bank (IDB) describes, in its organization profile, that as an international body, it has established the World Waqf Foundation (WWF) in 2001, in collaboration with waqf institutions, governmental organizations, NGOs and philanthropists from the private sector, to promote waqf to contribute to the development of cultural, social and economic of the member countries, as well as to alleviate poverty and to extend technical assistance and support to waqf institutions. At the national level, a few Muslim countries have established ministries and state bodies to manage their waqf institutions. For example, the Kuwait Awqaf Public Foundation (KAPF), a state body under the Ministry of Awqaf and Islamic Affairs was founded in 1993. According to Ibrahim (2009), KAPF is innovative in its approach to waqf development. Time Endowment was introduced to raise awareness on the importance of volunteering time for the benefits of others. An example of organizationally-run waqf institution is the Majlis Ugama Islam Singapura (MUIS), which, under the Administration of Muslim Law Act (AMLA) 1966, has been authorized to administer all waqfs in the country (Ramli & Sulaiman, 2006). Its subsidiary, WARESS Investment Pte. Ltd. was later established to focus on the commercial aspects of waqf development. In Malaysia, similar to Kuwait and Turkey, the role of the government is prominent in waqf management. According to YB Senator Mejar Jeneral (B) Dato' Jamil Khir bin Baharom, Minister in the Prime Minister's Department, the Malaysian government, in 2004, has established the Jabatan Wakaf, Zakat dan Haji (JAWHAR) at the national level to oversee the management of waqf resources in the country². In addition to JAWHAR, the State Islamic Religious Councils have roles in specific management and administration of waqf properties within the individual states, as enacted in the Ninth Schedule of the Federal Constitution of Malaysia³.

Other literatures have discussed the different Islamic modes of investment used in waqf institutions (Mohammad, n.d.; Kahf, 1998; Hasan & Abdullah, 2008), there are a few literatures dedicated to the topics of waqf land. Most of these have discussed the historic development of these lands and their legal aspects (Anuarul Perai, 2005; Hasan & Abdullah, 2008). There are writings that have classified waqf lands according to how they have been used, for example agriculture, construction, mosques, cemeteries, etc. (Mohammad, n.d.; MAIS, 2008). There is, however, hardly any literature that has categorized waqf lands according to their strategic locations and uses let alone matching them with Islamic investment modes.

² Source: Jabatan Wakaf, Zakat dan Haji (JAWHAR)

³ in the Ninth Schedule of the Federal Constitution of Malaysia, "*Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State*" are listed under the state list. This section of the Constitution (Article 74) provides the state Islamic Religious Councils with the authority to manage all matters pertaining to waqf properties within the state.

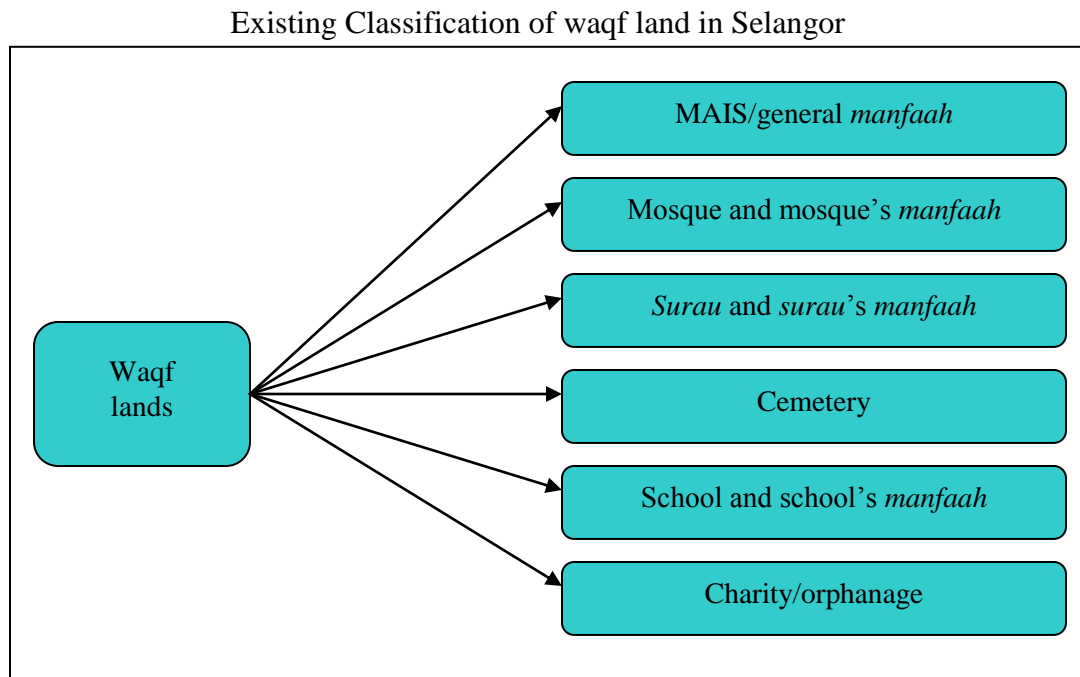
Before we present our proposal of categorizing waqf lands in Selangor according to their strategic locations and uses, and matching them with appropriate Islamic investment modes, the subsequent subsection, 2.1, reviews the literature on the present status of waqf lands in Selangor.

2.1 The Status of Waqf Lands in Selangor and their Investment Modes

The State of Selangor has been commended for being the first state in Malaysia that has instituted a waqf enactment to better manage and administer all the waqf properties in the state (Anuarul Perai, 2005). Section 52 of the National Land Code (Act 56 of 1965) specifies the use of lands according to “agriculture”, “building” or “industry”. Furthermore, Section 51 of the same National Land Code (Act 56 of 1965) states that lands above the shore-line be classified as town land, village land and country land.

In spite of these two provisions of classifying lands according to uses and geographic locations, the waqf lands in Selangor are categorized based on their locality (Daerah) and their uses, as in other states in Malaysia, are commonly associated with cemetery lands and the building of mosques and Islamic religious schools. Referring to MAIS’ reports⁴, the waqf lands in the state are categorized according to the specified purpose of the waqf as shown in Diagram 1 below.

Diagram 1



⁴ MAIS’ reports (2008)

According to the reports, up until December 2008, out of a total of 616.5225 acres of registered waqf lands, 503.798 acres were allocated for mosques, 50.5805 acres for schools and 2.592 acres for cemeteries⁵.

Table 1 below shows the sizes of waqf lands according to the above categorization as of December 2008.

Table 1

No.	Use of Waqf Land	Size (acres)	Percentage of Total Waqf Land
1.	Mosques	462.6238	75.04%
2.	<i>Surau</i>	41.1742	6.68%
3.	Cemeteries	2.5920	0.42%
4.	Schools	50.5805	8.20%
5.	Charities/Orphanages	11.3647	1.84%
Total			92.18%⁶

Based on Table 1, it can be seen that the waqf lands for religious purposes constitute more than 80% of the total waqf lands whilst waqf made for charity purposes constitute the least. Such classification of land use makes it unattractive for both investors and donors. This can also explain one of the main reasons why some of these waqf lands remain undeveloped. Several financial instruments have been employed by MAIS to raise its financial resources so as to enable the institution to manage all its waqf properties. However, most of these Islamic investment modes have been used on these waqf lands arbitrarily without matching them to the land use and their strategic locations. In fact, one does not need to innovate Islamic investment modes in a situation where over 80% of the land is reserved for religious purposes.

According to a study conducted by Hasan and Abdullah (n.d.), cash waqf and waqf shares have become popular means used by the State Islamic Religious Councils in Malaysia to generate financial resources for the purpose of funding the investment of waqf properties. Selangor, and two other states in Malaysia, namely Johor and Melaka have issued such waqf shares. Up to December 2007, the accumulated fund through Selangor Waqf Shares was RM15 million⁷, from which RM8 million was used to build Tengku Kelana Jaya Petra Mosque⁸. These cash waqf and waqf shares funds were also

⁵ “Analisis jumlah keluasan tanah wakaf yang telah didaftarkan atas nama Majlis Agama Islam Selangor mengikut daerah sehingga Disember 2008” by MAIS.

⁶ The remaining 7.82% are waqf lands for general manfaah/MAIS

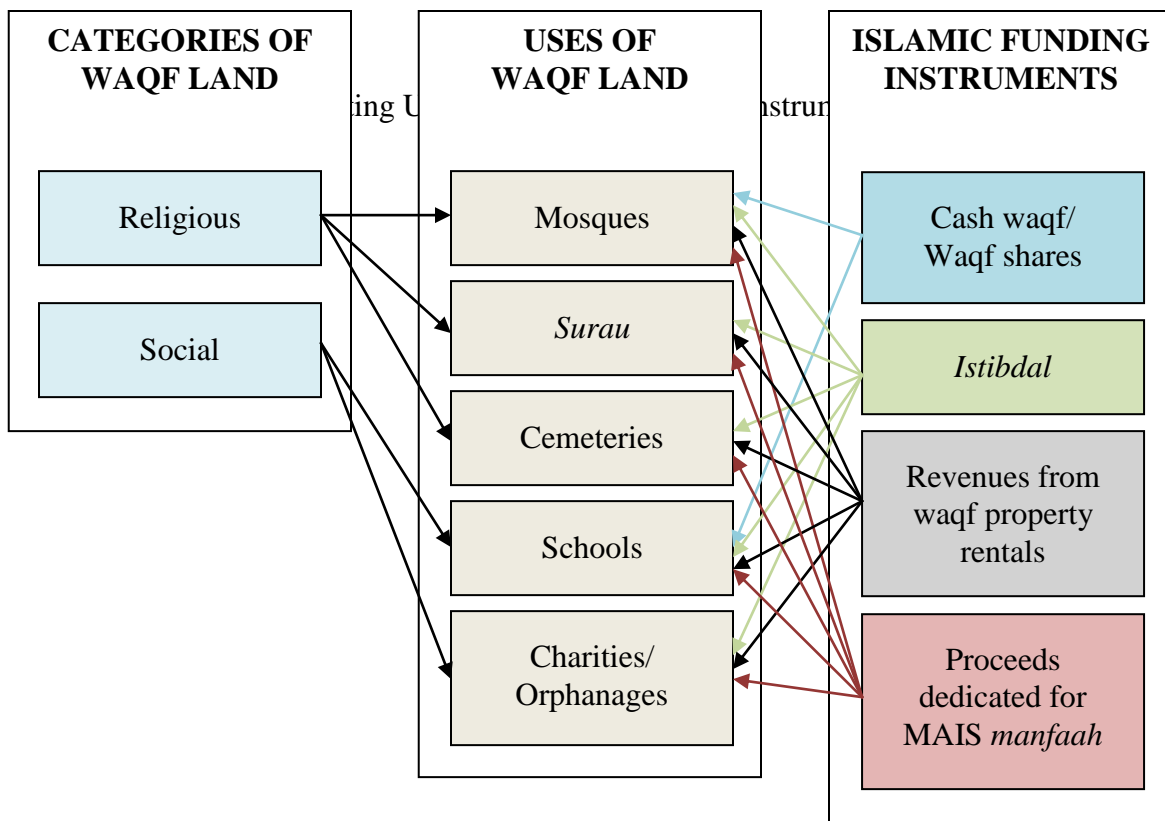
⁷ JAIS (2008). “Waqf: It’s strength and potential in developing the ummah”. Friday prayer sermon.

⁸ Source: MAIS (n.d.)

used to purchase 5 units of shop-houses in Bandar Bukit Puchong for the sum of RM1.05 million and to build the Center for Cyber and Knowledge Community at Wisma MAIS, Shah Alam, costing about RM0.35 million. These funding instruments are also used for religious purposes.

Istibdal is also being practiced by MAIS in accordance with the rules stipulated in the Wakaf (State of Selangor) Enactment 1999⁹. The new waqf properties are developed and utilized to generate income that can be used to maintain the properties. MAIS also utilizes government grants although it admits that these grants are insufficient in managing all its waqf lands¹⁰.

Despite all these funding instruments, MAIS still faces difficulties in raising sufficient financial resources to manage all its waqf lands. One probable reason is the unattractiveness of the present land classification to investors due to the fact that much of them are used for religious purposes. Such uses of waqf lands can also be counter productive in attracting new resources from potential donors (waqifs) who would wish their contributions to be invested in projects other than religious ones. Diagram 2 below depicts the usage of the various Islamic funding instruments for the waqf lands.



⁹ See Part IV: *Istibdal* and development of *mawquf* of the Wakaf (State of Selangor) Enactment 1999.

¹⁰ Interview with Ustaz Mohd Azmi bin Misron of Bahagian Mal (Unit Wakaf), Selangor Islamic Religious Council on the 2nd of July, 2009

From Diagram 2 above, it is apparent that the funding instruments, namely, *istibdal*, revenues from waqf properties as well as the dedicated proceeds for the *manfaah* of MAIS are used for the management of all categories of waqf lands. Only waqf shares are used to finance the development and management of large mosques and school projects¹¹. It can be deduced from the current practice that the adoption of the various funding instruments, to finance all the waqf land projects, is as and when necessary.

Currently, the waqf administrators in MAIS manage all waqf properties regardless of whether the waqf are waqf lands or waqf properties such as rentable residences or commercial buildings. This implies that the human resources for waqf management are not employed according to the categories of waqf properties to be managed and administered.

3.0 Proposed Categorization of Waqf Lands and their Matching with Islamic Modes of Investment

The current practice of categorizing waqf lands are based on the intentions of the donors (waqifs). New waqifs on seeing the present categorization based on religious uses would also donate waqf lands for the same purpose. There exist many managerial and financial issues in such categorization of the waqf lands as elaborated in the earlier section of this paper. In addition to the existing categories of waqf lands, the authors believe that the lands should also be classified according to the use and the location of the lands. By identifying the actual use of the lands as gazetted by the State Authority, MAIS would be able to avoid developing the waqf lands inappropriately. For example, if the waqf land was an agriculture land, MAIS would therefore, manage it accordingly with plantation projects, or if necessary, apply for the change of category of land use, to optimize the utilization of the waqf land. If the waqf land was an industrial land, industrial projects should be executed, from which the income could be used to finance the operation and management of the waqf property.

Land, being a real estate property, is subject to the dynamics that affect its value, one of which is the “location”. Hence, categorizing the waqf lands according to location is crucial. MAIS would be able to use the information to identify the most appropriate projects for lands having such distances from the main road, the commercial centers, the nearest town, transportation facilities, etc. To illustrate, due to their strategic locations, a piece of land in Sg. Buloh would command a lesser value as compared to a piece of land of the same size in Shah Alam, if it is to be developed for residential purposes. However, the same piece of land in Sg. Buloh would command a better value as compared to the same piece of land in Shah Alam, if it were to be developed for agriculture purposes.

Once these waqf lands have been categorized according to their uses and strategic locations, there is a need to match them with appropriate Islamic investment modes. This

¹¹ JAIS (2008). “Waqf: It’s strength and potential in developing the ummah”. Friday prayer sermon.

will help in enhancing efficiency and in attracting investments to the waqf landed properties.

A study conducted by Mohammad Tahir Sabit (n.d.) has proposed some Islamic funding instruments which can be used for various waqf projects. For credit-based financing, he suggests the use of build and transfer (*murabahah/al Bay' Bithamin Ajil*), forward sale (*istisna'/salam*) and leasing (*ijarah thumma al bay'*), which comprises of build-lease-transfer (*ijarah muntahia bittamleek*) and build-sale-leaseback (*mersad*). In the case of joint ventures, Mohammad suggests *mudarabah* or *musharakah*, while for equity participation, *mudarabah* and *musharakah* can be used. According to him, financing waqf projects can also be done via issuance of Islamic bonds (*sukuk*), which can be carried out through *mudarabah* and *ijarah* structures. Some of these Islamic investment instruments, according to him, can be applied in waqf projects as follows:

Build-lease-transfer (*ijarah muntahia bit tamleek*). Through this instrument, the financier would build the buildings on the waqf lands. After completion, the waqf institutions would lease these buildings for a period of time, in which by the end of the tenure, the financier would have recovered its funding and the desired profits. At the end of the lease period, the ownership of the buildings will be transferred to waqf either through sale, gift, or mere disposal by way of abandonment.

Asset-based *mudarabah*. Under this mode, the waqf institution lets the financier construct a building on waqf land, while the developer exclusively manages the project. Upon completion, the building is rented to a third party. The rental is shared between the institution and the developer. The waqf institution uses the revenue from the rental of the building to increase its share in the building and to distribute it among the beneficiaries. This mode is suitable to finance “building” and “industrial” types of waqf lands because the cost of construction is usually high. The proceeds from the rental of these types of buildings will be sufficient to pay for the high cost of constructing these buildings.

Securitization of project (shares and *sukuk*). Under equity participation financing mode, either via *mudarabah* equity or *musharakah* equity, through a single project waqf holding corporation, assets relating to a project can be unitized, with a nominal value for example, RM1 per unit, representing a share in the physical assets of the project. These shares can be sold and purchased easily in the open market by the interested public, hence providing liquidity in the said investment. Concerning *sukuk*, two types of asset-backed bonds can be structured, namely *muqaradah* bonds and *ijarah* bonds. Under *muqaradah* bonds, the *nazir* who is also the *mudarib* or the fund manager, issues bond certificates to the financier in return for cash deposits. These cash deposits are used to carry out development projects on the waqf lands. Unlike equity participation, the financier or the bondholder is only entitled to the benefits or *manfa'ah* of the attached assets, and not to the capital appreciation.

The proposed model combines the categories of waqf lands and their uses with the appropriate Islamic investment modes. This, however, will not be effective if the human resource factor is deployed haphazardly. The development and management of these waqf lands impact the kind of human capital required to make the initiative successful. Information on the location and use of the waqf lands are also required to deploy the right kind of human capital. For example, an agricultural project would likely require low

level human capital, whereas a waqf land that is developed into an industrial land, or a Free Trade Zone, would require a sizeable supply of skilled and semi-skilled human capital. Thus, skilled and experienced human resources in the various areas such as property development, business administration, marketing, finance and law are crucial. It is insufficient to employ human resources that are only knowledgeable in the area of *Shari'ah*.

3.1 Proposed Steps for Categorization and Matching

The following 5 steps are suggested by the authors for the proposed categorization of waqf lands in Selangor and their matching with Islamic investment modes:

1. Identify the location of the waqf lands. Examples of criteria that can be used are the exact location of the land, i.e. residential, commercial centre, or industrial area, distance from town and access to public road facilities and infrastructure.
2. Based on the identified locations, the lands are further analyzed according to the specified purpose of the waqf as well as according to the land use as gazetted by the State Authority, namely, agriculture, building and industrial. By doing so, the utilization of the waqf lands can be optimized based on the intrinsic attributes of the lands. Several criteria can be used in this step. These include identifying the fertility of the land, its nearness to water resources, location of the land vis-à-vis commercial centers, its investment potentials and returns, intrinsic values of the lands and future development plans, etc.
3. If the optimum usage of the lands are not in conformity with the land use as gazetted by the State Authority, apply for a change in the land use category
4. Match the categories of waqf lands against the most appropriate investment model that can effectively finance the waqf projects and generate the highest revenue
5. Based on the optimum usage of land identified, employ the appropriate human resources capital

Diagram 3 below illustrates the 5 steps as explained above.

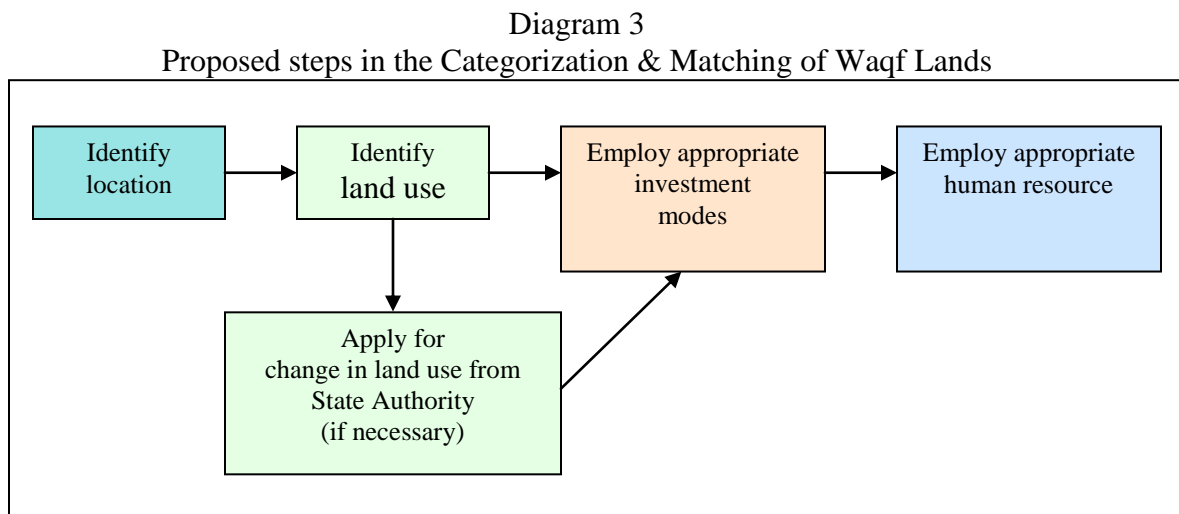
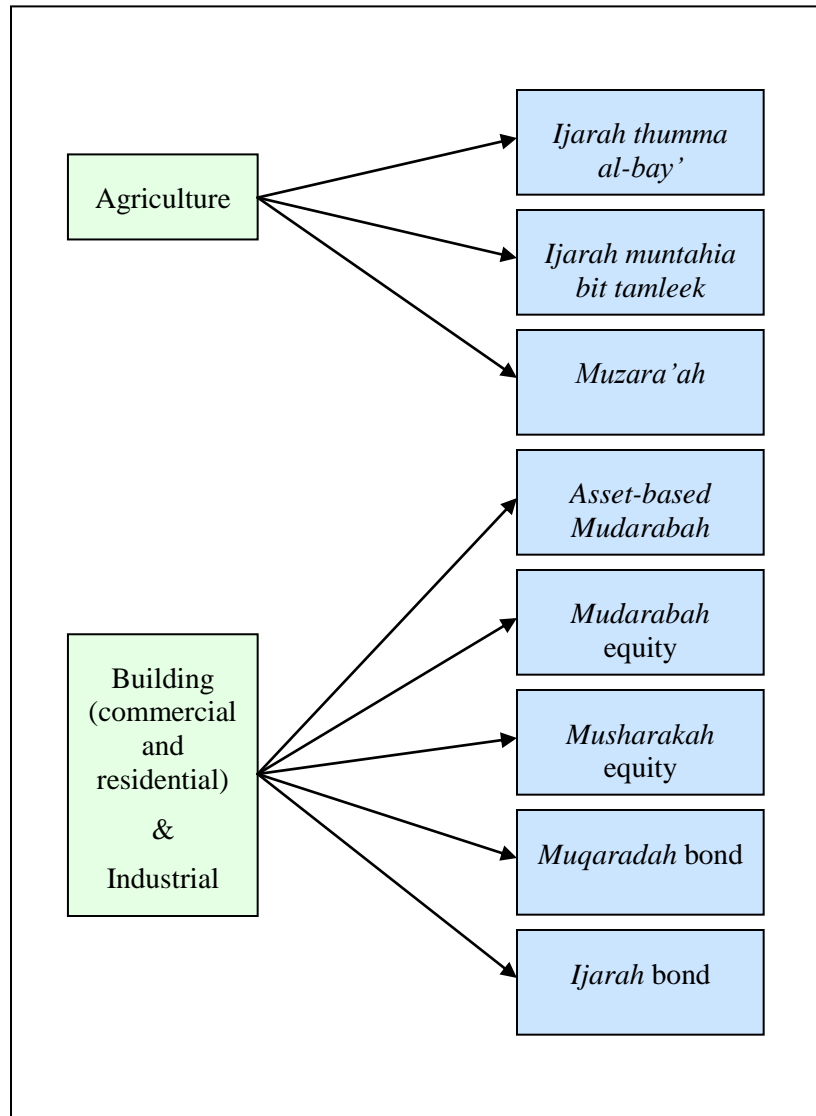


Diagram 4 illustrates the matching of the land categories with the appropriate Islamic investment modes.

Diagram 4

Proposed Matching of Waqf Land Categories
with their Respective Islamic Investment Modes



4.0 Benefits and Implications of the Proposed Categorization

The authors are of the opinion that one of the benefits of this new proposal is the implementation of proper categorization of waqf lands. By having proper land categories, the investment modes and human resources can be matched to the respective land categories. Also, by properly categorizing the waqf lands, potential investors and donors would be more attracted to fund development projects of the waqf lands. Investors would be able to calculate their investment returns and minimize their investment risks. Financial resources can be easily raised to develop and manage these waqf lands. Ultimately, all resources will be channeled appropriately, translating into proper utilization of resources of the Muslim societies, thus reducing wastage of valuable resources. Donors will have wide choices of waqf alternatives to contribute to. Infact, these choices can be widened in future to include education sector, public amenities and infrastructure developments. With proper categorization, the human resource needs and the required skills will be channeled properly. All these allied benefits would positively contribute to efficient management of waqf lands in Selangor.

5.0 Conclusion and Recommendations

Waqf, similar to *zakat*, is an integral and important part of the Islamic socio-economic system. Hence, it is crucial that it is managed and administered effectively and efficiently so that its benefits can be used to increase the wealth of the Muslim societies. Land, being the most popular waqf property, has been, for decades, mismanaged and underutilized for various reasons, namely, improper categorization of the waqf lands and lack of funding. As discussed in this paper, formal and official categorization of the waqf lands based on location as well as the use of the lands is fundamental. Once proper categorization is made, the waqf institution, in this case, MAIS will be able to better manage and administer the waqf lands by engaging appropriate human resources and deploying suitable investment modes. Also, by implementing proper categorization, valuable information can be obtained, which would not only assist the Muslims in using their properties as a form of *ibadah*, but as vital tools to increase wealth, thus improving the social and economic conditions of the Muslim societies.

The authors also suggest that future researches be conducted to further analyze and fine tune the investment models as proposed in this paper. The present model has used two criteria, namely strategic location and use of land to categorize the waqf lands in Selangor. It is hoped that future researches could include more criteria such as investment returns, intrinsic values of the lands and future development plans of the surrounding area to further refine the proposed model.

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